

EXHIBIT H

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 07 Civ. 2735(DC)

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4 SOMPO JAPAN INSURANCE COMPANY OF
5 AMERICA, and SOMPO JAPAN INSURANCE,
6 INC.,

7 Plaintiffs,

8 vs.

9 NORFOLK SOUTHERN RAILWAY COMPANY,
10 NORFOLK SOUTHERN CORPORATION, and
11 THE KANSAS CITY SOUTHERN RAILWAY
12 COMPANY,

13 Defendants.
14 -----x

15 Deposition of HOSHIZAKI ELECTRIC
16 COMPANY LIMITED, by YOSIYUKI IWAKI, taken
17 at the office of Sompo Japan Insurance
18 Company Of America, Two World Financial
19 Center, 225 Liberty Street, New York,
20 New York, on November 5, 2008 at 9:00 a.m.,
21 pursuant to F.R.C.P. 30(b)(6) and Notice,
22 before Robert M. Levine, a Shorthand Reporter
23 and Notary Public of the State of New York.

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<p>2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MALOOF, BROWNE & EAGAN, LLC</p> <p>4 Attorneys for the Plaintiffs and witness</p> <p>5 411 Theodore Fremd Avenue, Suite 190</p> <p>6 Rye, New York 10580</p> <p>7 (914) 921-1200</p> <p>8 BY: THOMAS EAGAN, ESQ.,</p> <p>9 JACQUELINE JONES, ESQ.</p> <p>10</p> <p>11 KEENAN COHEN & HOWARD, P.C.</p> <p>12 Attorneys for Defendants</p> <p>13 One Pitcairn Place, Suite 2400</p> <p>14 165 Township Line Road</p> <p>15 Jenkintown, Pennsylvania 19046</p> <p>16 (215) 609-1110</p> <p>17 BY: ALFONSO GAMBONE, ESQ.</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 FRANCES SEEDS,</p> <p>21 Japanese Interpreter</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>4</p> <p>1</p> <p>2 FRANCES SEEDS, called as the</p> <p>3 official interpreter in this matter, was duly</p> <p>4 sworn by the Notary Public (Robert M. Levine)</p> <p>5 to accurately and faithfully translate the</p> <p>6 questions propounded to the witness from</p> <p>7 English into Japanese and the answers given</p> <p>8 by the witness from Japanese into English.</p> <p>9 YOSIYUKI IWAKI, being first duly</p> <p>10 sworn by the Notary Public (Robert M.</p> <p>11 Levine), testified as follows:</p> <p>12 THE REPORTER: Full name and</p> <p>13 address for the record.</p> <p>14 THE WITNESS: My name is Yosiyuki</p> <p>15 Iwaki. Y-o-s-i-y-u-k-i I-w-a-k-i. And I am</p> <p>16 living in Matsue City in Shimane,</p> <p>17 S-h-i-m-a-n-e, Prefecture in Japan.</p> <p>18 MR. EAGAN: Just some</p> <p>19 preliminaries. The witness is here today</p> <p>20 through a notice of deposition which the</p> <p>21 plaintiff has served which we'll mark as</p> <p>22 Exhibit 1. And also here, inclusive of that,</p> <p>23 for certain 30(b)(6) topics for the notice of</p> <p>24 deposition which the defendant has been</p> <p>25 served. And I'm referring to the third</p>
<p>3</p> <p>1 IT IS HEREBY STIPULATED AND</p> <p>2 AGREED, by and between the attorney for the</p> <p>3 respective parties herein, that the sealing,</p> <p>4 filing and certification of the within</p> <p>5 deposition be waived; and sworn to before an</p> <p>6 officer authorized to administer an oath, with</p> <p>7 the same force and effect as if signed and</p> <p>8 sworn to before the officer before whom said</p> <p>9 deposition is taken.</p> <p>10 IT IS FURTHER STIPULATED AND</p> <p>11 AGREED that all objections, except as to form,</p> <p>12 are reserved to the time of trial.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>5</p> <p>1 Yosiyuki Iwaki</p> <p>2 amended notice of deposition, topic 15, topic</p> <p>3 20, topic 29, and, to some extent, topic 19.</p> <p>4 We'll mark the notice of</p> <p>5 deposition as Exhibit 1.</p> <p>6 (Notice of deposition to Yosiyuki</p> <p>7 Iwaki marked Hoshizaki Exhibit 1-A for</p> <p>8 identification as of this date.)</p> <p>9 MR. EAGAN: Also attorneys for</p> <p>10 the plaintiffs Sompo Insurance Company of</p> <p>11 America and Sompo Japan Insurance, Inc.. And</p> <p>12 we also represent the witness for the purpose</p> <p>13 of the deposition.</p> <p>14 Mr. Iwaki.</p> <p>15 THE WITNESS: Yes.</p> <p>16 MR. EAGAN: Have you ever been</p> <p>17 deposed before?</p> <p>18 THE WITNESS: I have not.</p> <p>19 MR. EAGAN: I'm going to ask you</p> <p>20 a series of questions. And the other lawyer</p> <p>21 will also be asking you some questions as</p> <p>22 well.</p> <p>23 THE WITNESS: Yes.</p> <p>24 MR. EAGAN: If you do not</p> <p>25 understand a question, please say so.</p>

<p>6</p> <p>1 Yosiyuki Iwaki</p> <p>2 THE WITNESS: Yes.</p> <p>3 MR. EAGAN: We will try to</p> <p>4 rephrase it in a better way so you're able to</p> <p>5 understand.</p> <p>6 THE WITNESS: Yes. I understand.</p> <p>7 MR. EAGAN: And if at any point</p> <p>8 during the deposition you need to take a</p> <p>9 break to have a drink of water, to use the</p> <p>10 rest room, just please say so and we'll</p> <p>11 accommodate the request.</p> <p>12 THE WITNESS: Yes. I understand.</p> <p>13 MR. EAGAN: All right. Thank</p> <p>14 you.</p> <p>15 THE WITNESS: So I'm allowed to</p> <p>16 have some water while the proceedings are</p> <p>17 going on?</p> <p>18 MR. EAGAN: Yes, you may.</p> <p>19 EXAMINATION BY MR. EAGAN:</p> <p>20 Q. Mr. Iwaki, by whom are you employed?</p> <p>21 A. I am currently working at Hoshizaki</p> <p>22 Electric Company Limited.</p> <p>23 Q. <u>Is there a particular location of that</u></p> <p>24 <u>company where you work?</u></p> <p>25 A. I am working at Hoshizaki Electric</p>	<p>8</p> <p>1 Yosiyuki Iwaki</p> <p>2 Q. And you've been at the Shimane plant</p> <p>3 since 2000?</p> <p>4 A. No. I have been working at the Shimane</p> <p>5 factory since I entered the company.</p> <p>6 Q. Oh, since 1988?</p> <p>7 A. Yes, that's correct.</p> <p>8 Q. There's a reference to a GA department.</p> <p>9 What is that?</p> <p>10 A. It is general affairs.</p> <p>11 Q. Could you just give us a very general</p> <p>12 outline of what the general affairs department does?</p> <p>13 A. General affairs handles the various</p> <p>14 administrative work in the factory as well as</p> <p>15 finance work as well as Human Resources work.</p> <p>16 Q. Since December of 2005, you were the</p> <p>17 manager of the production control department until</p> <p>18 June of 2007?</p> <p>19 A. No. I was manager.</p> <p>20 Q. Now you're manager of the production</p> <p>21 control department?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. What were your duties as the manager of</p> <p>24 the production control department?</p> <p>25 A. You mean the work that I engage myself</p>
<p>7</p> <p>1 Yosiyuki Iwaki</p> <p>2 <u>Company Limited's Shimane plant.</u></p> <p>3 Q. <u>And is Shimane a city in Japan?</u></p> <p>4 A. <u>It is a prefecture in Japan.</u></p> <p>5 Q. Now, I'm going to place in front of you</p> <p>6 an exhibit binder. And we will go through some of</p> <p>7 them today. I ask if you could just turn to Exhibit</p> <p>8 No. 9.</p> <p>9 A. Yes.</p> <p>10 Q. Is this your curriculum vitae?</p> <p>11 A. Yes. It is my curriculum vitae.</p> <p>12 Q. In addition to your work history on</p> <p>13 there, did you receive any degrees from</p> <p>14 universities?</p> <p>15 A. Yes. I have graduated from university.</p> <p>16 Q. What's the name of that university?</p> <p>17 A. The current name of it is Hyogo,</p> <p>18 H-y-o-g-o, Prefectural University.</p> <p>19 Q. What year did you obtain your degree?</p> <p>20 A. I graduated in 1981.</p> <p>21 Q. What was your degree in?</p> <p>22 A. My major was in economics.</p> <p>23 Q. Now, you first began work for Hoshizaki</p> <p>24 in 1988?</p> <p>25 A. That's correct. Yes.</p>	<p>9</p> <p>1 Yosiyuki Iwaki</p> <p>2 with?</p> <p>3 Q. Yes.</p> <p>4 A. As far as the primary content of the</p> <p>5 work is concerned, it would be, first of all,</p> <p>6 receiving the sales, the information pertaining to</p> <p>7 orders from the sales department and checking the</p> <p>8 requests against the inventory at the factory. And</p> <p>9 making a determination as to how many of each model</p> <p>10 type product needs to be produced in addition to</p> <p>11 what's available in the inventory.</p> <p>12 The second work that I engage myself in</p> <p>13 has to do with the procurement of materials and</p> <p>14 parts that are necessary in order to provide support</p> <p>15 for the production activities that are being carried</p> <p>16 out at the factory.</p> <p>17 Q. <u>What is the business of Hoshizaki</u></p> <p>18 <u>Electric?</u></p> <p>19 A. <u>The business of Hoshizaki Electric is</u></p> <p>20 <u>to manufacture and to sell commercial kitchen</u></p> <p>21 <u>equipment and appliances.</u></p> <p>22 Q. <u>Could you give us some examples of the</u></p> <p>23 <u>type of appliances?</u></p> <p>24 A. <u>Yes. Ice makers, sushi cases, and</u></p> <p>25 <u>commercial purpose refrigerators.</u></p>

10

1 Yosiyuki Iwaki

2 Q. What products are manufactured at the
3 Shimane plant?

4 A. The main products that are produced at
5 the Shimane factory are the icemakers, the sushi
6 cases, and the table-type commercial refrigerators.

7 Q. And just ask if you could turn to
8 what's been marked as Exhibit 5. It lists certain
9 types of sushi cases and certain types of icemakers
10 on the document.

11 Do you see that?

12 A. Yes.

13 Q. Are these types of sushi cases and
14 icemakers manufactured at the Shimane plant?

15 A. Yes, that's correct. Those sushi cases
16 and icemakers that are listed here are those that
17 are manufactured at the Shimane factory.

18 Q. For approximately how many years has
19 Hoshizaki manufactured sushi cases?

20 A. I don't have the accurate figures.
21 However, I believe that it would be a bit over 20
22 years, approximately, for sushi cases.

23 Q. Have they manufactured sushi cases ever
24 since you joined the company?

25 A. That's correct.

11

1 Yosiyuki Iwaki

2 Q. The sushi cases of the models that are
3 listed on this Exhibit 5, approximately how many
4 years has Hoshizaki been manufacturing them?

5 A. As far as these type models are
6 concerned, I think it would be about five years.

7 Q. For how many years has Hoshizaki been
8 producing icemakers?

9 A. I have heard that as far as icemakers
10 are concerned, that they have been manufactured by
11 our company for approximately 40 years.

12 Q. Have they manufactured icemakers ever
13 since you joined the company?

14 A. That's correct.

15 Q. In your position in 2005 and 2006 at
16 Hoshizaki, you've become familiar with the type of
17 icemakers and sushi cases that are listed on Exhibit
18 5?

19 A. That's correct.

20 Q. Referring to the period now in 2006.

21 A. Yes.

22 Q. What steps, if any, did Hoshizaki take
23 to ensure that the icemakers and sushi cases leaving
24 the plant were in good operating order?

25 A. Yes. I was able to learn about these

12

1 Yosiyuki Iwaki

2 things by speaking with the person or persons in
3 charge of the final inspection of the product before
4 it is to be shipped out. And had heard from the
5 person or persons regarding the state of the
6 product, the content of the products, as well as
7 also referring to documents that pertained to those
8 products.

9 Q. What department within the plant
10 performs what we'll call a quality check of the
11 units before they leave the factory?

12 A. Well, it would be the inspection
13 section of the quality assurance department.

14 Q. Is there a Mr. Hara who works in that
15 department?

16 A. Yes. There is a manager by the name of
17 Mr. Hara.

18 Q. And is there a Mr. Esumi who also works
19 in that department?

20 A. Yes. There is a Mr. Esumi, E-s-u-m-i.
21 And he is superior to Mr. Hara. And he is the
22 manager of the quality assurance department.

23 Q. Is that part of the inspection
24 department?

25 A. Rather, it is the inspection section

13

1 Yosiyuki Iwaki

2 which is part of the quality assurance department.

3 Q. What type, if any, of inspection does
4 the inspection department perform?

5 A. There would be an inspection done by
6 the inspection section as to the various items that
7 need to be checked for; such as, whether the product
8 is in a good operational state and if it can be
9 operated correctly or not.

10 Q. If you could turn to what we've marked
11 as Exhibit 1.

12 First of all, could you identify what's
13 been marked as Exhibit 1?

14 A. This is a product inspection
15 certificate that was issued by the inspection
16 section of our quality assurance department.

17 Q. Does that document set forth the type
18 of tests that are done by the inspection department
19 on each machine before leaving the factory?

20 A. Yes. That's correct.

21 Q. So, for instance, they checked the
22 insulation resistance, the outer view construction.
23 They perform a pressure test.

24 These type of items that are listed?

25 A. Yes, that's correct.

<p style="text-align: right;">22</p> <p>1 Yosiyuki Iwaki</p> <p>2 it.</p> <p>3 Q. What group of products does it refer</p> <p>4 to?</p> <p>5 A. I don't quite understand what you mean</p> <p>6 by "what group of products."</p> <p>7 If you could please rephrase your</p> <p>8 question in a manner that I would be able to</p> <p>9 understand, please.</p> <p>10 Q. Sure.</p> <p>11 If I can, just by way of explanation,</p> <p>12 if you can refer to what's been marked as Exhibit A</p> <p>13 which you were referring to earlier in the case?</p> <p>14 A. Yes.</p> <p>15 Q. Do the inspection certificates which</p> <p>16 have been marked as Exhibit 1 refer to the items</p> <p>17 which are listed on Exhibit 5?</p> <p>18 A. Yes. That is correct.</p> <p>19 Q. <u>Could you tell us what the next step is</u></p> <p>20 <u>after a product is manufactured at the Shimane</u></p> <p>21 <u>factory?</u></p> <p>22 <u>What happens next in the process?</u></p> <p>23 A. <u>The next step would be that at the</u></p> <p>24 <u>factory, once the product is finished, that it would</u></p> <p>25 <u>then be passed on to the logistics department and</u></p>	<p style="text-align: right;">24</p> <p>1 Yosiyuki Iwaki</p> <p>2 determination made as to what type of carton to put</p> <p>3 the particular types of products?</p> <p>4 A. Yes.</p> <p>5 Q. Please describe.</p> <p>6 A. With regard to each product that is</p> <p>7 produced, beginning with the design stage, the</p> <p>8 design department would not only design the product,</p> <p>9 but would also design the packaging for the product.</p> <p>10 And the final determination as to the appropriate</p> <p>11 packaging of the product would be made by conducting</p> <p>12 various tests. Examples of which are the vibration</p> <p>13 test where the products are loaded onto a vehicle.</p> <p>14 And we check to see how much of a vibration, the</p> <p>15 packaged product can withstand.</p> <p>16 There is also another test where the</p> <p>17 products are loaded onto the trucks and carried to a</p> <p>18 remote location. And we would check to see whether</p> <p>19 the packaging was able to withstand that</p> <p>20 transportation to the remote location. And we would</p> <p>21 then grasp the tolerance level of the product that</p> <p>22 is packaged for transportation.</p> <p>23 And a final determination would be made</p> <p>24 as to the appropriate packaging of the product.</p> <p>25 Q. Was such determination made with</p>
<p style="text-align: right;">23</p> <p>1 Yosiyuki Iwaki</p> <p>2 <u>would go to the warehouse of the logistics</u></p> <p>3 <u>department. And the logistics department based upon</u></p> <p>4 <u>the guidance that they receive from the sales</u></p> <p>5 <u>department with regard to the shipment, that is to</u></p> <p>6 <u>say, where the products need to be shipped, how many</u></p> <p>7 <u>units of what type of products need to be shipped,</u></p> <p>8 <u>once this information is received, from the sales</u></p> <p>9 <u>department at the logistics department, they would</u></p> <p>10 <u>then be responsible for shipping out the products.</u></p> <p>11 Q. <u>And some point are the units put into</u></p> <p>12 <u>cartons at the factory?</u></p> <p>13 A. <u>At the same time that the inspection is</u></p> <p>14 <u>conducted. Once it is completed, then it would be</u></p> <p>15 <u>put into a carton, the product.</u></p> <p>16 Q. Are you familiar with the type of</p> <p>17 cartons that were utilized to pack these particular</p> <p>18 type of sushi cases and icemakers?</p> <p>19 A. I do know.</p> <p>20 Q. Please describe them.</p> <p>21 A. The product would be placed in a</p> <p>22 cardboard box. And would be packaged with</p> <p>23 insulating material; in this case, foam polystyrene.</p> <p>24 And it would be packaged in that manner.</p> <p>25 Q. Do you know whether there was a</p>	<p style="text-align: right;">25</p> <p>1 Yosiyuki Iwaki</p> <p>2 respect to the types of packaging which was used on</p> <p>3 the machines at issue in this litigation?</p> <p>4 A. Yes. That is correct. Those</p> <p>5 considerations began at the design phase and went</p> <p>6 all the way to the final transport stage. And a</p> <p>7 determination was made,</p> <p>8 (Report to overseas operation</p> <p>9 department marked Hoshizaki Exhibit 2 for</p> <p>10 identification as of this date.)</p> <p>11 (English translation of Exhibit 2</p> <p>12 marked Hoshizaki Exhibit 3 for identification</p> <p>13 as of this date.)</p> <p>14 Q. I'm going to show you what we've marked</p> <p>15 as Exhibit No. 2. And ask if you can identify that</p> <p>16 document.</p> <p>17 MR. EAGAN: Just for the record</p> <p>18 Exhibit 3 is an English translation of</p> <p>19 Exhibit 2.</p> <p>20 A. As far as 2 is concerned, this is the</p> <p>21 report to the overseas operation department that the</p> <p>22 specific type models with the numbers as follows</p> <p>23 were shipped.</p> <p>24 Q. This is called a shipping report?</p> <p>25 A. Shipping report.</p>

30

1 Yosiyuki Iwaki
 2 litigation, we have asked Sumitrans,
 3 S-u-m-i-t-r-a-n-s, to handle these matters as our
 4 export company.
 5 (Fax transmission on the
 6 letterhead of Shousen Koun marked Hoshizaki
 7 Exhibit 4 for identification as of this
 8 date.)
 9 Q. If you could turn to what we've marked
 10 as Exhibit 4.
 11 MR. EAGAN: By the way, before we
 12 go on, does anybody need a break?
 13 THE WITNESS: Shall we?
 14 MR. EAGAN: If you prefer, yes.
 15 Just want to take five minutes?
 16 THE WITNESS: Yes, please.
 17 MR. EAGAN: Five minutes, okay.
 18 (Short recess.)
 19 BY MR. EAGAN:
 20 Q. Referring to what has been marked as
 21 Exhibit 4, is this a document which was received by
 22 Hoshizaki?
 23 A. I think so.
 24 Q. If you look at what's been Bates
 25 stamped at the bottom 147, you see at the bottom

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1 Yosiyuki Iwaki
 2 there is some fax information.
 3 Can you read the name of the company on
 4 that fax which sent the fax?
 5 A. The name of the company would be
 6 Shousen, S-h-o-u-s-e-n, Koun, K-o-u-n. And it was
 7 sent on March 23, 2006 it says.
 8 Q. Are you familiar with the Shousen Koun
 9 company?
 10 A. I do not know the details. However, I
 11 had heard from Mr. Fujihara, whom I had referred to
 12 in my earlier testimony, that he had said to me that
 13 every time there would be an export that would be
 14 made from Kobe port, that our products would first
 15 be transferred to Shousen Koun's warehouse.
 16 Q. And would they be put in the container
 17 at the Shousen warehouse?
 18 A. I think that perhaps that might be the
 19 case. But as for that, I am not really familiar
 20 with the details.
 21 Q. Is that because Hoshizaki relied on
 22 Sumitrans to take care of the stuffing of the goods
 23 into the container?
 24 A. I had heard from our overseas operation
 25 department that as for the export which is handled

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1 Yosiyuki Iwaki
 2 by Sumitrans, that we do not know in our company of
 3 the details as to what happens with those
 4 procedures.
 5 Q. What was the name of the person in the
 6 overseas operations department?
 7 A. It would be a person in charge by the
 8 name of Yoshii, Y-o-s-h-i-i.
 9 Q. Now, have you learned whether Hoshizaki
 10 provided any instructions to Sumitrans regarding
 11 these stuffing of the cartons into the container?
 12 A. Similarly, Mr. Yoshii, who is with the
 13 overseas operation department had said to me that
 14 when Sumitrans is asked to pack the container, that
 15 there be a band put around the product so that the
 16 products would not fall over. And also, not to
 17 place irregularly sized boxes above the uniform size
 18 boxes below, so as to make it unstable.
 19 (Packing list marked Hoshizaki
 20 Exhibit 5 for identification as of this
 21 date.)
 22 Q. I'm going to show you what we've marked
 23 as Exhibit 5 which you referred to before. But I
 24 ask if you could identify that document?
 25 A. This is a packing list.

33

1 Yosiyuki Iwaki
 2 Q. Who prepares the packing list?
 3 A. Our overseas operations department
 4 would create this.
 5 Q. Is this type of document created every
 6 time Hoshizaki Electric ships product?
 7 A. I have heard that every time there is
 8 to be an export, that this document would be
 9 prepared.
 10 Q. It's a document that Hoshizaki
 11 maintains in its files in the ordinary course of its
 12 business?
 13 A. It is a document that is created when
 14 there is to be an overseas shipment activity. And
 15 after it is created it would be maintained.
 16 (Copy of an invoice marked
 17 Hoshizaki Exhibit 6 for identification as of
 18 this date.)
 19 Q. If you could turn to Exhibit No. 6 and
 20 ask if you could identify that document.
 21 A. This is an invoice.
 22 Q. Does the invoice relate to a particular
 23 shipment?
 24 A. This is an invoice which was created
 25 when the ship was loaded with the products that were

<p style="text-align: right;">54</p> <p>1 Yosiyuki Iwaki</p> <p>2 are typically kept by your company with regards to</p> <p>3 your units.</p> <p>4 A. When the products are inspected, the</p> <p>5 inspection records a pass or fail would be marked</p> <p>6 regarding that product that is inspected.</p> <p>7 Q. How is that documented? What document</p> <p>8 is created?</p> <p>9 A. In the ISO standards the inspection</p> <p>10 records are included therein. So that is also</p> <p>11 included.</p> <p>12 Q. So, was Exhibit 1 created strictly for</p> <p>13 this litigation; not normal course of business?</p> <p>14 MR. EAGAN: Objection in that it</p> <p>15 calls for the witness to make a legal</p> <p>16 conclusion.</p> <p>17 MR. GAMBONE: What I'm asking the</p> <p>18 witness is, is this document described in</p> <p>19 Exhibit 1 a document created in the normal</p> <p>20 course of business regardless of litigation?</p> <p>21 MR. EAGAN: The witness had</p> <p>22 testified earlier that it was prepared when</p> <p>23 the customer requests.</p> <p>24 A. Yes, that's correct.</p> <p>25 Q. So, it was created for the purposes of</p>	<p style="text-align: right;">56</p> <p>1 Yosiyuki Iwaki</p> <p>2 the logistics department. However, as far as the</p> <p>3 logistics department is concerned, there is a person</p> <p>4 in charge there.</p> <p>5 Q. Who is that person?</p> <p>6 A. Well, you're asking about the person</p> <p>7 who is responsible or the person who handles the</p> <p>8 matter?</p> <p>9 Q. Both.</p> <p>10 A. At that time as to whom those persons</p> <p>11 were, I do not know right now as I sit here.</p> <p>12 Q. When the trucking company transported</p> <p>13 the freight to the dock from your facility, no one</p> <p>14 from your company participated in that movement; is</p> <p>15 that correct?</p> <p>16 A. No, we did not have that.</p> <p>17 MR. EAGAN: Reread the question.</p> <p>18 (Question read.)</p> <p>19 Q. So there is no one from your company</p> <p>20 that could testify as to the conditions of the goods</p> <p>21 when they were loaded onto the ships; is that</p> <p>22 correct?</p> <p>23 MR. EAGAN: Objection. What the</p> <p>24 conditions of the goods are is one thing.</p> <p>25 Whether someone saw the container being</p>
<p style="text-align: right;">55</p> <p>1 Yosiyuki Iwaki</p> <p>2 this litigation?</p> <p>3 MR. EAGAN: Objection.</p> <p>4 Q. Describe the movement of the freight</p> <p>5 from your company's facility using the Nihon trucks,</p> <p>6 I'm sorry, as a joint activity; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Can you describe what you mean by</p> <p>9 "joint activity"?</p> <p>10 A. What I meant by joint activity was that</p> <p>11 when the products are to be loaded onto the truck,</p> <p>12 then our company employees, together with the Nihon</p> <p>13 truck employees would both be there making certain</p> <p>14 that it is being loaded onto the truck.</p> <p>15 Q. Who supervises that activity?</p> <p>16 A. The department that would be in charge</p> <p>17 of that would be the logistics department.</p> <p>18 Q. Who in the logistics department would</p> <p>19 have supervised that joint activity?</p> <p>20 THE INTERPRETER: May I just</p> <p>21 confirm with the witness a portion of his</p> <p>22 answer, please?</p> <p>23 Thank you very much. I've been</p> <p>24 able to confirm.</p> <p>25 A. I'm not sure who it might have been in</p>	<p style="text-align: right;">57</p> <p>1 Yosiyuki Iwaki</p> <p>2 loaded is a separate issue. I think it's a</p> <p>3 confusing question.</p> <p>4 MR. GAMBONE: We'll still ask</p> <p>5 that he answer that question over objection.</p> <p>6 Could we have the question read</p> <p>7 back.</p> <p>8 (Question read.)</p> <p>9 A. Yes. That is correct. There is no one</p> <p>10 who has confirmed that there.</p> <p>11 Q. And neither Exhibits 5 nor Exhibit 6</p> <p>12 give a description of the condition of the goods at</p> <p>13 that point; is that correct?</p> <p>14 MR. EAGAN: Objection. I'm</p> <p>15 confused.</p> <p>16 MR. GAMBONE: Exhibit 5 and</p> <p>17 Exhibit 6 are invoices; is that right?</p> <p>18 MR. EAGAN: And the packing list.</p> <p>19 Q. And neither one of those exhibits are</p> <p>20 describing the conditions of the goods; is that</p> <p>21 right?</p> <p>22 MR. EAGAN: Objection. The</p> <p>23 document does describe.</p> <p>24 MR. GAMBONE: Counsel, can I ask</p> <p>25 if the plaintiff will be designating a</p>

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1 Yosiyuki Iwaki
 2 witness to testify as to the condition of the
 3 goods at the dock or the rail origin?
 4 MR. EAGAN: No. We've already
 5 advised to that as to those areas there is no
 6 knowledge.
 7 MR. GAMBONE: Okay.
 8 Q. Sir, can I ask, what is your
 9 understanding of Exhibit 7?
 10 A. I think that this is a document that is
 11 issued by Sumitrans, letting us know that our
 12 products have been loaded. And it is proof of that.
 13 Q. And did you speak to the producer who
 14 produced this document?
 15 MR. EAGAN: The person at
 16 Hoshizaki?
 17 MR. GAMBONE: No, the person at
 18 Sumitrans.
 19 A. No. I have not spoken with a person at
 20 Sumitrans.
 21 Q. Just to clarify, sir, you cannot
 22 testify to the condition of the freight at the rail
 23 origin point in the United States; is that correct?
 24 MR. EAGAN: Objection. It's
 25 unclear. Was he personally there? That's

1 Yosiyuki Iwaki
 2 MR. GAMBONE: It hasn't been
 3 established.
 4 MR. EAGAN: Once it leaves it's
 5 under, you know, Sumitrans, under Yang Ming,
 6 under Norfolk Southern, or any intermediate
 7 railroad. There was nothing there that can
 8 say at each point who would know that. We've
 9 said that from day one.
 10 BY MR. GAMBONE:
 11 Q. Sir, can you describe for me the
 12 procedure that your insurance company requires you
 13 to follow with regards to your claim that you filed?
 14 MR. EAGAN: Objection. He has
 15 not been designated as a 30(b)(6) on that
 16 subject. But you can answer.
 17 MR. GAMBONE: It's No. 18,
 18 compensation on damages.
 19 MR. EAGAN: Earlier on the case
 20 during the depositions of the surveyors, I
 21 forget the gentleman's name, but he was
 22 designated as the 30(b)(6) for that topic
 23 prior to this deposition.
 24 MR. GAMBONE: But it was my
 25 understanding that he was going to testify

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1 Yosiyuki Iwaki
 2 one thing but --
 3 MR. GAMBONE: He was designated
 4 as the designee. So he could acquire the
 5 knowledge. That's all I'm asking him.
 6 MR. EAGAN: Acquire the knowledge
 7 from who?
 8 MR. GAMBONE: He can acquire the
 9 knowledge by asking. Under 30(b)(6) it is
 10 permitted to acquire the knowledge through
 11 documents or speaking to someone.
 12 MR. EAGAN: Right.
 13 MR. GAMBONE: It doesn't need to
 14 be firsthand knowledge.
 15 MR. EAGAN: But we have already
 16 advised that no one at Hoshizaki has
 17 knowledge as to condition at the discharge
 18 port, at the rail origin. Anything other
 19 than that.
 20 MR. GAMBONE: Who would have that
 21 knowledge?
 22 MR. EAGAN: We don't know.
 23 Hoshizaki would not know.
 24 MR. GAMBONE: Would Sompso know?
 25 MR. EAGAN: No. Nor Sompso.

1 Yosiyuki Iwaki
 2 regarding No. 18 today; is that correct?
 3 MR. EAGAN: No. 18, no. If I
 4 did --
 5 MR. GAMBONE: I have marked 15,
 6 18, 20 and 29. It's 15, 19.
 7 MR. EAGAN: And 19 was qualified
 8 from origin to the load port. Because that's
 9 all Hoshizaki has knowledge of.
 10 MR. GAMBONE: I'm going to still
 11 ask him to testify about it.
 12 MR. EAGAN: Whether he has any
 13 knowledge about it?
 14 MR. GAMBONE: Yes.
 15 Can we get that question read
 16 back.
 17 (Question read.)
 18 MR. EAGAN: Same objection. But
 19 go ahead.
 20 A. I'm not sure what you mean by the
 21 procedure.
 22 Q. Did they require you to submit any
 23 documents to them?
 24 A. With regard to this matter?
 25 Q. Yes.

<p style="text-align: right;">78</p> <p>1 Yosiyuki Iwaki</p> <p>2 spot-checking?</p> <p>3 A. What I meant by spot-checking earlier</p> <p>4 in my testimony had to do with how I had looked at</p> <p>5 the items that had passed on this inspection</p> <p>6 certificate in this exhibit and compared it to the</p> <p>7 inspection records which were the basis of what was</p> <p>8 written here. And looked to see whether they</p> <p>9 conformed to one another. They were consistent with</p> <p>10 one another or not. That's what I meant by</p> <p>11 spot-checking.</p> <p>12 Q. And those records that you're referring</p> <p>13 to are only the records which are created when they</p> <p>14 are requested by a customer that they be created;</p> <p>15 isn't that right?</p> <p>16 MR. EAGAN: Objection. That</p> <p>17 wasn't the testimony.</p> <p>18 MR. GAMBONE: Well, he testified</p> <p>19 that the records were created upon a</p> <p>20 customer's request. So that's what he</p> <p>21 testified to.</p> <p>22 MR. EAGAN: Let's just clarify.</p> <p>23 There are just certain terms of art that he's</p> <p>24 using here.</p> <p>25 MR. GAMBONE: Okay.</p>	<p style="text-align: right;">80</p> <p>1 Yosiyuki Iwaki</p> <p>2 he had received from the overseas operations</p> <p>3 department of our company. So he created that based</p> <p>4 on the request from that department. And he had</p> <p>5 hypothesized that possibly the request might have</p> <p>6 come from Sompō Japan.</p> <p>7 MR. GAMBONE: Okay. All right.</p> <p>8 That's all the questions that I have.</p> <p>9 BY MR. EAGAN:</p> <p>10 Q. Just a couple of follow-up.</p> <p>11 What's the distance from your plant to</p> <p>12 Kobe?</p> <p>13 A. It's about, roughly, 250 kilometers.</p> <p>14 Q. Finishing up with this Exhibit 1.</p> <p>15 Now, you talked before about the</p> <p>16 inspection records and inspection reports. Those</p> <p>17 documents are created at the time of the actual</p> <p>18 inspection by the person in the Hoshizaki inspection</p> <p>19 department; is that correct?</p> <p>20 A. Yes. That is correct.</p> <p>21 Q. Those documents, the inspection</p> <p>22 reports, inspection records, they're created every</p> <p>23 time a unit is manufactured; is that correct?</p> <p>24 A. Yes. That is correct for each and</p> <p>25 every unit that is produced based on the model</p>
<p style="text-align: right;">79</p> <p>1 Yosiyuki Iwaki</p> <p>2 MR. EAGAN: Inspection</p> <p>3 certificates is the document that we're</p> <p>4 referring to as Exhibit 1. Inspection</p> <p>5 reports or records, or the underlying</p> <p>6 documents?</p> <p>7 If the witness can help clarify,</p> <p>8 the underlying documents, are they referred</p> <p>9 to as reports or records?</p> <p>10 THE WITNESS: I do apologize. It</p> <p>11 seems as if inspection records is the correct</p> <p>12 way to refer to them. However, there are</p> <p>13 times when we might sometimes refer to the</p> <p>14 inspection records as the inspection reports.</p> <p>15 MR. EAGAN: Reports and records</p> <p>16 are initial documents. Certificate is this</p> <p>17 particular exhibit.</p> <p>18 MR. GAMBONE: Okay.</p> <p>19 BY MR. GAMBONE:</p> <p>20 Q. So these certificates, and this is a</p> <p>21 question for him, were created upon the request of</p> <p>22 Sompō; is that correct?</p> <p>23 A. What I had heard from Mr. Hara was that</p> <p>24 he had prepared this document. And it was a</p> <p>25 document that was prepared based on the request that</p>	<p style="text-align: right;">81</p> <p>1 Yosiyuki Iwaki</p> <p>2 manufacturing numbers which are given to each and</p> <p>3 every product.</p> <p>4 Q. One thing I didn't ask before.</p> <p>5 You were asked some questions about</p> <p>6 dates, I believe, when the units arrived at the load</p> <p>7 port. And you answered you didn't know off the top</p> <p>8 of your head, but if you had documents you might be</p> <p>9 able to find out.</p> <p>10 I just want to show you Exhibit 7.</p> <p>11 Are you able to determine from that</p> <p>12 document the date which the goods were delivered to</p> <p>13 Kobe?</p> <p>14 A. The day that it arrived at Kobe port?</p> <p>15 Q. Yes.</p> <p>16 A. Because this is not a document that I'm</p> <p>17 used to seeing on a daily basis in the course of my</p> <p>18 work. I don't really know.</p> <p>19 Q. Is there any date listed on the</p> <p>20 document?</p> <p>21 A. I'm thinking maybe there is no date</p> <p>22 that shows when the products arrived at Kobe port.</p> <p>23 Q. You're not fluent in the English</p> <p>24 language, correct?</p> <p>25 A. That's correct.</p>